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10/783,812	02/20/2004	Barry Gammon	GAM-001CON	7060
35557	7590	10/23/2006	EXAMINER	
CHRIS A. CASEIRO VERRILL DANA, LLP ONE PORTLAND SQUARE PORTLAND, ME 04112-0586			SHAKERI, HADI	
			ART UNIT	PAPER NUMBER
			3723	

DATE MAILED: 10/23/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/783,812
Filing Date: February 20, 2004
Appellant(s): GAMMON, BARRY

MAILED
OCT 23 2006
Group 3700

Chris A. Caseiro
For Appellant

**Supplemental
EXAMINER'S ANSWER**

This is in response to the supplemental appeal brief filed September 15, 2006 appealing from the Office action mailed July 21, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

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The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,715,347	JOHNSON	08-1955
Des. 376,521	FARNAN ET AL	12-1996
5,697,268	MAKOVSKY ET AL	12-1997
GB 2 266 257	HIGGINS	10-1993

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

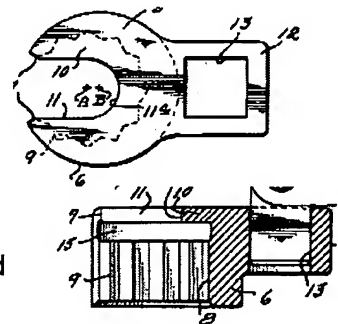
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Claims 1-6 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the limitation "and does not extend above the first face" as recited in the last line, renders the claim indefinite for making the scope unascertainable. The claim does not set forth or define "above" or "below" in reference to the structure or the socket claimed. Further "above" would depend on the orientation of the socket claimed, e.g., the socket as disclosed in Fig. 2 of Higgins (GB '257) applied to a nut in a sink (like Fig. 2 of the instant Application) would have a port not extending "above" the first face (the face not including the port) and if applied to a workpiece like a nut projecting from a floor, would have a port extending "above" the first face. The language as recited is indefinite.

Claims 1 and 2 (as best understood) stand rejected under 35 U.S.C. 102(b) as being anticipated by Johnson, US Patent No. 2,715,347.

Johnson discloses all the limitations, i.e., a socket having a center line (B) and a perimeter (Fig. 3), first face (bottom face as shown in Figs. 2 and 4), an opposite second face, and a receiving slot extending from the first face towards the second including a receiving region (8) adjacent to the first face (first face separated from the second face by web 10) having a center line (A) offset from (B) and includes a step (defined by 10 or 15) against which the connection element rests during rotation of the socket body, and wherein the second face includes a port (13) that does not extend to the first face, having a center line that is not in alignment with the socket body positioned within the perimeter of the socket body.

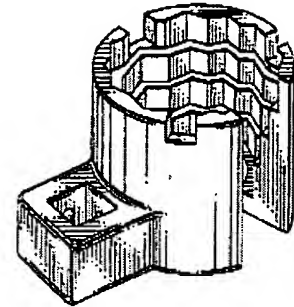


Regarding claim 2, Johnson meets the limitations.

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Claims 3-6 (as best understood) stand rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Farnan et al., US Patent No. Des. 376,521.

Johnson meets all the limitations of the claims except for stepped polygonal and rounded configurations, and wing slots. Farnan et al. teaches stepped polygonal configurations having wing slots. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Johnson

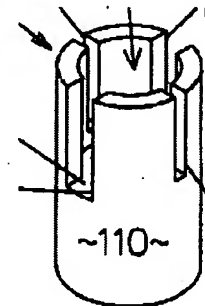


with the polygonal stepped configuration and wing slots as taught by Farnan et al. to adapt the tool for driving different sized fasteners and fasteners having wings.

Regarding the rounded configuration claim 5, It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the receiving section rounded instead of polygonal for wing nuts having rounded head, since it has been held that changing shape, dependent on work-piece parameters, involves only routine skill in the art. *In re Stevens*, 101 US PQ 284(CCPA1954).

Claims 4, 5 (as best understood) stand rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view Makovsky et al., US Patent No. 5,697,268.

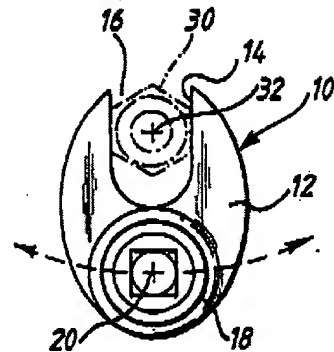
Johnson meets all the limitations of the above claims except for wing slots and rounded configurations. Makovsky et al. teaches wing nut driver having slots. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Johnson with the configuration and wing slots as taught by Makovsky et al. to adapt the tool for driving fasteners having wings.



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Claims 1-6 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins (GB 2 266 257) in view Farnan et al.

Higgins meets all the limitations of the claim 1, i.e., a socket having a center line and a perimeter, first face and an opposite second face, and a receiving slot extending from the first face towards the second including a receiving region adjacent to the first face having a center line that is not in alignment with the centerline of the socket body (Fig. 1) and wherein the second face includes a port (24) that does not extend to the first face of the socket body, the port having a center line that is not in alignment with the center line of the socket body, except for a step against which the connection element rests during rotation of the socket body. Farnan et al. teaches stepped polygonal configurations having wing slots. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the invention of Higgins with the polygonal stepped configuration and wing slots as taught by Farnan et al. to adapt the tool for driving different sized fasteners and fasteners having wings.



Regarding claims 2-4 and 6, Higgins as modified by Foeman et al. meets the limitations.

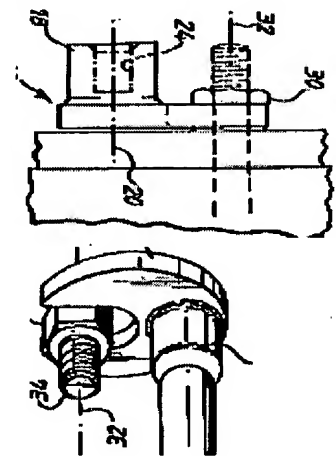
Regarding the rounded configuration, claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the receiving section rounded instead of polygonal for wing nuts having rounded head, since it has been held that changing shape, dependent on work-piece parameters, involves only routine skill in the art. *In re Stevens*, 101 US PQ 284(CCPA1954).

(10) Response to Argument

Appellant argues with regards to the rejection under 112, 2nd paragraph, that even though the limitation regarding the structural relationship of the invention, i.e., the drive port (16) does not extend above the first face (31) should have actually been does not extend above the second face (32), but states that the claim is definite. As was indicated in the Final Office Action, the claim does not set forth or define "above" or "below" in reference to the structure or the socket claimed. Thus "above" would depend on the orientation of the socket claimed. Appellant proposed amendment filed on 11/14/2005, after final rejection was not entered since in addition to correcting or overcoming the 112, 2nd paragraph rejection, the proposed amendment included changes that would effect the rejection over prior art applied, e.g., Higgins. Appellant was notified in the subsequent communication that a separately submitted amendment to overcome the 112, 2nd paragraph rejection, would be entered, however, Appellant did not choose to do so.

Higgins as applied to the claims, meets the limitation of a port on the second face not extending above the first face. The change proposed after final would directly effect Higgins, and as such would require further consideration and search, therefore the entry was denied, as Appellant had opportunity to amend the claims prior to close of prosecution.

With regards to the claim being indefinite, as was indicated in the Final Office Action, a socket, e.g., per Higgins, applied as shown in Fig. 2 of Higgins, would not meet the limitation of the port not extending "above" the first surface (the first surface being on the bottom touching the floor or support to which the workpiece 30, 34 are attached to), but same socket applied to a workpiece as shown here (upside down) would meet the same limitations, i.e., "not extending above the first face", in its broadest reasonable interpretation.

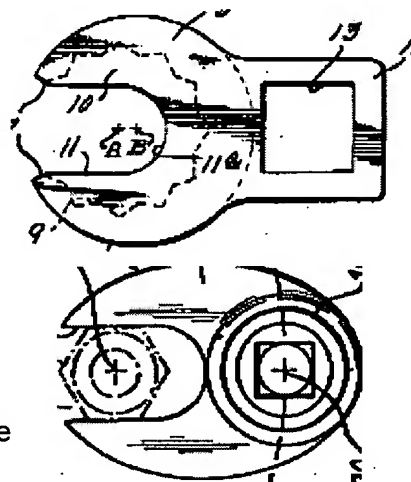


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The claim was rejected and Appellant notified as how the claim as recited may be interpreted, so that correction and/or clarification may be made to the claim, however, claims under appeal still recite for a port not extending "above" the first face.

In response to the argument against anticipation, Appellant argues that the port in Johnson is not part of the body, and states that the port is in the handle section and not the head proper or box portion 5 of the wench head. This argument fails to indicate which part of the claim limitations are not met. Whether Johnson discloses an inferior design or not does not further limit the tool as claimed. At best it appears, Appellant reads more into the "body" than recited. Claim recite for the body to have a center line and a perimeter, a first face, an opposing second face and a receiving slot extending from the first face to the second face...the socket body includes a step against which the workpiece rests...and wherein the socket drive port is positioned within the perimeter of the socket body and does not extend above the first face.

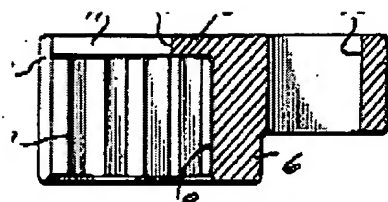
Lackign structural limitation and relationship and or clear definitions of the elements, the socket of Johnson meets the "body" as recited. The fact that the port is located on "handle receiving shank" as argued by Appellant, does not exclude the reference, as it appears that Appellant is arguing for the shape of the body, without such limitations recited in the claim. In fact Higgins was cited to emphasis this point, that the port is part of the body.



With regards to the argument that the driver port of Johnson is not the same, because the port in Johnson is through and through, again Appellant is arguing features not recited in the claim. The limitation regarding the port is that it does not extend through to the first face, which is met by the port as disclosed by Johnson. The second face of the socket (the upper surface as

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shown here) includes a port (13), which does not extend to the first surface (the lower surface shown here).



The argument against the anticipation is not valid since all the claims' limitations are met, i.e.,

A socket for rotatably loosening or tightening a connection element, the socket comprising a socket body having a centerline (the body has an infinite number of "centerlines", e.g., B which is a lateral center on a line dividing the body symmetrically in half widthwise, or a centerline on a longitudinal line which would be

offset from B towards the port, here B was noted by the Examiner to meet this limitation), a first face (lower surface of cavity as shown here), an opposing

second face (upper surface) and a receiving slot

(cavity 8) extending from the first face to the

second face, wherein the receiving slot includes a receiving region adjacent to the first face for

receiving and capturing therein the connection element, the receiving region having a centerline (A) that is not in alignment with the centerline of the socket body (e.g., Fig. 3) and includes step (defined by 10 or 15) against which the connection element rests during rotation of the socket body, wherein the second face includes a socket driver port (13) therein that does not extend through to the first face of the socket body (as shown here, extends to a third face but not the first), the socket driver port having a centerline that is not in alignment with the centerline of the socket body (e.g., Fig. 3, shown here), and wherein the socket driver port is positioned within the perimeter of the socket body and does not extend above the first face (e.g. Fig. 2).

FIG. 3.

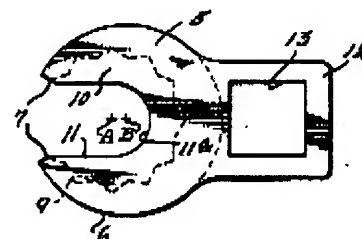
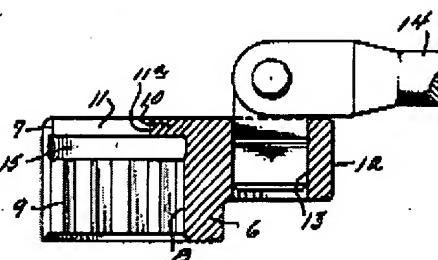
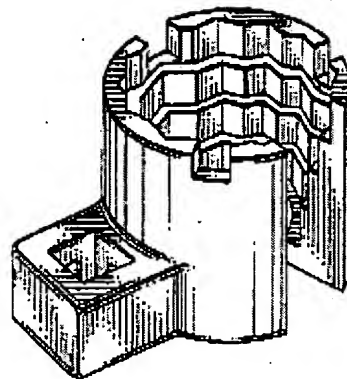


FIG. 2.



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The argument against obviousness rejection over Johnson modified by Farnan is that the port is not part of the body which is not valid as indicated above, since the "body" is not limited in the claims to read over the body as disclosed by either Johnson or Farnan including the port; and that there is no motivation to combine since Farnan is a design patent, and that the steps and the wing slots are shown but are not described in writing. This argument is not valid since not only one of ordinary skill in the art but also an ordinary person through the disclosure of Farnan, e.g., Fig. 1



(shown here) would be motivated and able to improve the socket of Johnson by adapting it for different sizes of workpieces, (stepped configurations) and workpieces having wings (the slots to accommodate the wings).

For Johnson as modified by Makovsky, The Appellant argues against the references individually, that Makovsky does not show the offset centerlines or disclose a basin wrench and that it has a compact design. Makovsky teaches modifying sockets with wing slots to accommodate workpieces having wings of different sizes.

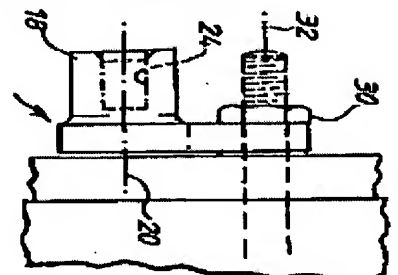
Appellant further characterizes the primary object of the invention of Johnson to be a strong wrench head. Examiner agrees that the two primary objects of the device of Johnson are, a wrench head that resist forces tending to spread the open end of the wrench and wrench heads that prevent slippage. The latter is accomplished by offset centerlines (A and B) making it possible to engage the workpiece where the access is difficult and to prevent slippage. With regards to strong head, Johnson discloses the use of a "thickened" wall (6).

Modifying the socket with stepped configurations for accommodating different size workpieces, and/or with wing slots (at the distal ends of the wall) for adapting the socket for winged workpieces, in no way compromises the thickened wall as disclosed.



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Appellant in arguing against the combination of Higgins and Farnan, states that Farnan does not apply to the present invention, apparently because Farnan is a design patent. Appellant also argues that Higgins would likely teaches away from the modification since its receiving region has a slender construction and it describes the receiving region as having "two parallel sides". This again amounts to piecemeal analysis as references are attacked individually. Higgins does not disclose a stepped configuration, as it is not applied under anticipation rejection. It lacks the teaching for steppe configuration or a step as recited in claim 1 and further lacks the wing slots as recited in claim 4. The question is whether modifying it in view of Farnan et al. is proper. The argument that Farnan et al is a design patent and thus has no written description is not valid since, at least, one of ordinary skill in the art in view of the Farnan's disclosure would be motivated and able to modify the socket of Higgins in adapting it for different sized workpieces (stepped configuration) and slots to accommodate workpieces having wings. The argument against parallel sizes is not valid since Higgins is not concern with adapting the socket for different sizes, the device as disclosed is designed for a specific size. But there is nothing to exclude one of ordinary skill in the art to improve upon the socket by adapting it for different sized workpieces in view of Farnan et al. The argument that the receiving region and the driver port of Higgins are aligned with each other and thus the modified references would not meet all of the claims limitations is in error. The receiving region of Higgins is offset from the driver port as shown e.g., in Fig. 2. Further the argument that "the socket driver port of Higgins extends beyond the face of the socket body" is invalid, because such limitation is not recited in the claims.



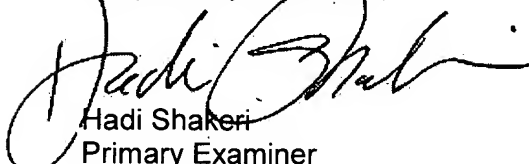
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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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